IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 19239 of 2006(M)

(AGAINST THE ORDER DATED 27/05/2006 IN E.A.53/06 IN E.P.12/2006 IN OS.253/2002 of THE MUNSIF COURT, KANJIRAPPALLY)

.....

PETITIONER: JUDGMENT DEBTOR:

ANITHA ASHOKAN, PARIYARATHU VEEDU, KOTTADIKUNNUBHAGOM, EDABHAGOM KARA, CHIRAKKADAVU, KOTTAYAM DISTRICT.

BY ADV. SRI.LIJI.J.VADAKEDOM

RESPONDENT:DECREE HOLDER:

KOMALAVALLY, D/O.GOPALAN NAIR, KOTTADIKUNNEL, EDABHAGOM KARA, CHIRAKKADAVU, KOTTAYAM DISTRICT.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WC.NO.19239/2006M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE CERTIFICATE ISSUED FROM THE TALUK HEAD QUARTERS HOSPITAL KANJIRAPPALLY DTD. 10/07/2003.**

EXT.P2: **COPY OF THE CERTIFICATE ISSUED FROM THE VILLAGE OFFICER, CHIRAKADAVU DTD. 22/03/2006.**

EXT.P3: **COPY OF THE PETITION FOR ATTACHMENT FILED BY THE PETITIONER AS EA 53/06 IN E.P.12/06 BEFORE THE M.C.**

EXT.P4: **COPY OF THE OBJECTION FILED BY PETITIONER TO EXHIBIT P3 PETITION.**

EXT.P5: **COPY OF THE ORDER DTD. 27/05/2006.**

EXT.P6: **COPY OF THE SALE PROCLAMATION ISSUED IN RESPECT OF PETITIONER PROPERTY.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

- -

W.P.(C) No.19239 of 2006

- -

Dated: 10th July, 2007

JUDGMENT

The judgment-debtor against whom a money decree is passed is aggrieved by Ext.P5 order by which the execution court has turned down her plea that she is an agricultural labourer and therefore her house property is not liable to be attached or sold.

2. Heard Mr.Liji J.Vadakedom, learned counsel for the petitioner and Mr.T.R.Harikumar, learned counsel for the respondent.

3. On going through Ext.P5 impugned order, it is seen that the learned Munsiff has taken the view that it was up to the petitioner to have established by adducing satisfactory evidence that she is entitled for the benefits under Section 60(1)(c) of the Code of Civil Procedure. The petitioner did not adduce even oral evidence before the execution court. Though in this court she has produced Exts.P1 and P2 before this court, those documents not produced before the execution court. Noticing the apparent merit in the grounds raised, this court admitted the Writ Petition and granted interim stay on condition that the petitioner pays a sum of Rs.2000/- towards the decree debt on or before 21.9.2006. Counsel for the petitioner submits that the above condition has been complied with by the

petitioner and that submission is not resisted by the counsel for the respondent. Counsel for the petitioner submits that if an opportunity is given it will be possible for the petitioner to substantiate her contention by adducing evidence including Exts.P1 and P2. Considering the request of the learned counsel for the petitioner, I am inclined to grant the same.

4. Accordingly, I set aside Ext.P5 and direct the execution court to take a fresh decision on the question whether the petitioner is entitled for the benefits under Section 60(1)(c) of the Code on condition that till such time as the learned Munsiff completes the enquiry and takes fresh decision the petitioner will remit every month commencing from 1.8.2007 at the rate of Rs.750/- towards the decree debt. It is open to the petitioner to produce Exts.P1 and P2 or any other evidence which she chooses to adduce before the execution court. The execution court will finalise the enquiry and pass fresh orders at its earliest and at any rate within six months of receiving copy of this judgment. In the meanwhile if the petitioner commits default in payment of any of the instalments as directed above, she

will forfeit the benefit of this judgment and under such an event the impugned order will become operative.

The Writ Petition will stand disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**